

SEPA IWG Meeting
Wednesday, May 28, 8:30 a.m. – 12:00 p.m.
King County Executive Office, Seattle

In AttendanceCo-Leads:

Jim Lopez	King County
Dick Settle	Foster Pepper
Jeannie Summerhays	Washington Department of Ecology

Members and Alternates:

Jayson Antonoff	City of Seattle, Department of Planning & Development
Greg Carrington	Chelan PUD
Sean Cryan	Mithun
Valerie Grigg Devis	Community, Trade, and Economic Development
Jennifer Dold	Bricklin, Newman, Dold, LLP
Ann Farr	Washington Public Ports Association
Kari-Lynn Frank	National Association of Industrial and Office Properties
Hilary Franz	Bainbridge City Council
Mark Kulass	Douglas County
Dan McGrady	Vulcan
T.C. Richmond	GordenDerr Attorneys at Law
Michael Robinson-Dorn	UW Law School
Carol Lee Roalkvam*	Washington Dept of Transportation
Kristen Sawin (by phone)	Weyerhaeuser
Tim Trohimovich	Futurewise
Tayloe Washburn	Foster Pepper
Perry Weinberg	Sound Transit
Clay White (by phone)	Stevens County
Jim Wilder	Jones & Stokes

*Alternate for Megan White, WA DOT

Absent:

Connie Krueger	City of Leavenworth
Bill Messenger	Washington Labor Council
David Trout	Nisqually Tribe

Facilitation:

Tom Beierle	Ross & Associates Environmental Consulting, Ltd.
Roma Call	Ross & Associates Environmental Consulting, Ltd.

Welcome and Introductions

The SEPA Implementation Working Group Co-leads, Jim Lopez (King County), Dick Settle (Foster Pepper), and Jeannie Summerhays (Washington Department of Ecology) welcomed the

group and introduced themselves. Members introduced themselves, followed by meeting observers in attendance.

Tom Beierle (Ross & Associates) reviewed the meeting agenda. He gave the group a brief overview of the meeting logistics, facilitator role, and facilitator ground rules.

Introduction from Climate Action Team

Jay Manning, Director of the Washington Dept of Ecology, welcomed the group by telephone to the SEPA IWG process. He outlined the group's charge from the Climate Action Team (CAT) and discussed its scope of work. Director Manning emphasized that Washington State, by convening the SEPA IWG, is seeking to proactively address the issue of SEPA and climate and avoid having "policy by litigation." He added that Ecology regards it as very likely—although not one hundred percent certain—that the state already has the authority to address climate under SEPA. The IWG's scope, he said, includes recommending how to incorporate climate considerations into SEPA as well as recommending ways to use SEPA to provide incentives or disincentives for certain types of projects or plans.

SEPA IWG Vision, Scope and Principles

Jim, Dick, and Jeannie gave an overview of the SEPA IWG vision, scope and principles. The following are highlights of the presentation.

Vision

- The purpose of the SEPA IWG is to bring stakeholders together to determine how to ensure that climate change is included in SEPA processes and documents.
- The SEPA IWG will focus on implementing recommendations from the Climate Advisory Team and the Preparation and Adaptation Working Groups. Specific recommendations from these groups called for using SEPA to:
 - Identify greenhouse gas emissions and mitigation options in decision making, planning, and projects, and
 - Analyze and address how changes in the environment due to climate change affect decision-making, plans and projects.
- In other states and nationally, litigation has been initiated to challenge SEPA-like environmental review documents; this kind of litigation has now been initiated in Washington.
- The SEPA IWG's overarching goal is to avert "policy by litigation" by clarifying SEPA rules and providing supporting guidance and other resources to make the SEPA process as clear and predictable as possible.
- The SEPA IWG's work will be incorporated into the CAT's final report which will be considered by the Governor and Legislature in the 2009 Legislative Session
- The SEPA IWG's work will also inform Ecology's SEPA rule development process scheduled to begin in early 2009.

Scope

- As the SEPA IWG develops an approach for addressing climate change through SEPA, it will cover:

- A proposal's likely effect on emissions of greenhouse gases and resulting environmental impacts; and
 - A proposal's other cumulative or combined environmental impacts caused by the interaction of the proposal with environmental change that has already occurred or is likely to occur in the future as a result of climate change.
- The group will also consider how SEPA should apply to both projects and non-projects.
 - SEPA IWG work will emphasize developing products, such as guidance, tools, forms (e.g., SEPA checklist) and statutory or rule amendment language.
 - The group will divide its work into three related but separable areas of SEPA compliance outlined in the scope (i.e., the three "buckets").
 - The work of the SEPA IWG is related to other ongoing stakeholder processes to address how climate will be addressed in the state's Growth Management Act and through transportation planning and projects. The group will not work directly on these issues, but will keep track of these related processes. (Participants' meeting packets included a diagram showing how the SEPA IWG related to other policy development processes.)

Principles

- The Department of Ecology believes—and the SEPA IWG co-leads concur—that SEPA already requires an assessment of a proposal's potential impact on climate change.
- The SEPA IWG will seek, but will not require consensus. If consensus can not be reached on specific proposals:
 - Voting will be used to determine the strength of any recommendation, and
 - Minority recommendations of individual members or groups of members will be conveyed to the CAT.
- This is an open and transparent process; the public can attend and listen to all meetings and obtain information and documents from the website.
- In meetings and in conducting work between meetings, it is vital that participants work collaboratively and inclusively. It is not appropriate to lobby each other inside conversations or meetings.
- The focus of the SEPA IWG should be this new effort, not agendas from the past.
- The SEPA IWG has a lot of work to do and the timeframe is very tight; members will need to stay focused on the most important issues and products.
- Because the IWG has a lot to accomplish in a short amount of time, it is very important that members attend and prepare for meetings. Once the IWG makes a decision, it will not go back and revisit it.

In discussing the IWG's vision, scope and principles, members made the following observations:

- The scope of the SEPA IWG's work is very related to the work of the transportation IWG and the advisory group convened to address climate in the Growth Management Act; we need to keep in close contact with those processes to inform the work of the SEPA IWG and vice versa;
- There may be a relationship between the work of the SEPA IWG and what is being considered by the Puget Sound Partnership; and
- It would be helpful to develop a list of SEPA IWG terms and definitions so that members use the same language as work proceeds.

IWG Member Roles and Responsibilities

Tom highlighted the Roles and Responsibilities document and asked members to read it. He read through the participant ground rules. Tom emphasized the importance of in-person attendance and commented that for individuals who miss a meeting, the group will not return to issues already decided upon.

SEPA IWG Approach, Schedule, and Resources

Tom reviewed the SEPA IWG approach, schedule, and resources as follows.

Approach

- SEPA IWG work will be organized around the three work areas; with each proceeding roughly in parallel
- SEPA IWG work will proceed through three phases
 - Phase 1: scoping/work plan—next meeting (June 20)
 - Phase 2: development of resources (guidance, tools, forms)
 - Phase 3: development of statutory and legislative amendment language
- The work flow will be a mix of between-meeting drafting and key decision points and review at meetings. Members are encouraged to contribute to between-meeting work
- The SEPA IWG will present draft products to the CAT by early September and final documents by mid-October. There may be follow-on work in October/November with a focus on Ecology's rule writing effort, which starts in January 2009.

Schedule

- The SEPA IWG schedule will include a mix of teleconferences and in-person half day or full day meetings.
- The group will meet roughly every 3 weeks with some meetings every two weeks in July.
- Tom distributed the meeting schedule and asked members to respond to him by Friday, May 30 with any meetings they could not attend.

Resources

- The SEPA IWG has state and consulting staff support for this process.
- Ecology has provided a Sharepoint site to members for working documents. Tom will distribute detailed "how to" information to members.
- Ecology also hosts a public website at the following address:
www.ecy.wa.gov/climatechange/.

Overview of SEPA and Climate

Phil Ferester of the Washington Attorney General's Office gave a presentation on the fundamental aspects of SEPA. He outlined the key steps and decision points in the SEPA process, including:

- SEPA exemptions;
- The SEPA checklist;
- Threshold determination and the definitions of "probable" and "significant;"
- Determination of Non-Significance, Mitigated Determination of Non-Significance, and Determination of Significance;

- “Scoping” and draft and final EIS’s; and
- “Substantive SEPA” and appeals.

The full presentation is available at: www.ecy.wa.gov/climatechange/2008CAT_iwg_sepa.htm.

During the presentation, participants discussed the following issues:

- Clarification of what triggers the need for a public meeting on a Draft Environmental Impact Statement;
- The fact that there is typically only one “lead agency” unless there is an agreement to have co-lead agencies’ and
- The extent to which SEPA can be used to improve environmental conditions rather than to make proposed projects and non-projects less environmentally harmful.

Following Phil’s presentation, Jeannie and Dick described how specific aspects of SEPA relate to the IWG’s work. They explained that the work of the IWG would consider both projects and non-projects (e.g. a comprehensive plan). They also described two types of “impacts” the IWG will consider, including:

- A proposal’s likely effect on emissions of greenhouse gases and resulting environmental impacts; and
- A proposal’s other cumulative environmental impacts caused by the interaction of the proposal with environmental change that has already occurred or is likely to occur in the future as a result of climate change.

They used diagram to describe these two types of impacts. (The diagram is available on the SEPA IWG website as “impact diagram.”)

Dick outlined three ways that SEPA could be clarified in order to avoid litigation. They were: 1) exemptions from SEPA for projects and non-projects that meet certain specified standards, 2) mandated SEPA processes for certain types of projects and non-projects, and 3) clear guidance, rules, and statutory language on how to apply SEPA to climate change. He noted that the IWG will likely need to address issues such as revising the SEPA Checklist, clarifying how to make threshold determinations, and guidance on addressing climate-related impacts in an EIS.

During the presentation, participants discussed the following issues and questions:

- The degree to which different jurisdictions should have flexibility in implementing SEPA, (e.g., making threshold determinations);
- Whether exemptions discussed by the SEPA IWG would exempt parties only from the climate portions of SEPA or all of SEPA; and
- The importance of education and training for small jurisdictions.

Jim Lopez presented an overview of King County’s approach to addressing climate change through SEPA. (The presentation will be made available on the SEPA IWG website.) Jim described the lessons learned from King County’s experience and how it relates to the SEPA IWG work, emphasizing:

- King County’s efforts to date have mainly concerned what the SEPA IWG is identifying as Bucket 1, “Measurement and Disclosure;” the county is now moving into Bucket 2

(“Mitigation and Adaptation”) issues related to using substantive SEPA authority to compel mitigation and Bucket #3 (“Leveraging SEPA”);

- King County developed tools and resources to assess emissions, such as the “Greenhouse Gas Emissions Worksheet,” which calculates average emissions based on factors such as building type, square footage, etc.; and
- King County is using “non-zero” emissions thresholds, and is assessing projects (e.g., for purposes of determining whether mitigation is needed) based on how their emissions compare to those of an average project.

Following the presentation, participants raised the following issues and questions:

- The extent to which Jim, who brings with him the experience of King County, will look at issues with a fresh perspective as a co-lead of the SEPA IWG; and
- The working relationship between Seattle and King County on SEPA and climate.

Public Comment

Steven Jones, Marten Law Group, said that many of his clients are involved in large development projects and that these larger projects receive more scrutiny than smaller projects. He would like to see the IWG recommend economic incentives for building high density, mixed use developments.

Next Steps

Tom said that the next step for the group will be to develop “work plans” for each of the three buckets to be discussed and presented at the June 20 teleconference. The plans will describe the key decisions the IWG will need to make in each area and the products the IWG should produce, including guidance, tools, forms, and recommended rule and statutory language.

Tom distributed a sheet for members to indicate their interest and expertise in the three buckets, as well as their willingness to participate in developing work plans over the next three weeks. For each of the three buckets, the group will need a point of contact to collect and bring together information from other members. Until those points of contact are identified, Tom will be the point of contact.

Tom will provide information to members about the use of a SharePoint website for downloading documents and exchanging project information between members. Resources mentioned during the meeting will be posted on the site along with discussion areas for the IWG’s scope and each of the three buckets.

The next meeting will be a teleconference on June 20. The agenda will focus on reviewing and discussing the work plans for each bucket. Members will then set the specific work agenda for the IWG.